

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Chelsea 19th Street Associates : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Mortgage Tax under
Article 11 of the Tax Law for the Mortgage Recorded:
on 9/7/82.

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of January, 1984, he served the within notice of Decision by certified mail upon Chelsea 19th Street Associates, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Chelsea 19th Street Associates
c/o Kaye-Marin Associates, Inc.
175 Clearbrook Rd.
Elmsford, NY 10523

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
31st day of January, 1984.

David Parchuck

Ann R. Haggard
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chelsea 19th Street Associates : AFFIDAVIT OF MAILING
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Article 11 of the Tax Law for the Mortgage :
Recorded on 9/7/82.

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of January, 1984, he served the within notice of Decision by certified mail upon Robert E. Helpern, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert E. Helpern
Newman, Tannenbaum, Helpern & Hirschtritt
310 Madison Avenue
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
31st day of January, 1984.

David Parchuck

James A. Helpern
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
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Recorded on 9/7/82.

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of January, 1984, he served the within notice of Decision by certified mail upon Gemrose Realty, Inc. the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gemrose Realty, Inc.
c/o Jerome Gold
11 Park Place
New York, NY 10007

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
31st day of January, 1984.

David Parchuck

James A. Hagedorn
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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In the Matter of the Petition :
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for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Mortgage Tax under :
Article 11 of the Tax Law for the Mortgage :
Recorded on 9/7/82.

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of January, 1984, he served the within notice of Decision by certified mail upon Martin Hollander, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Martin Hollander
c/o Kaye-Marin Assoc., Inc.
212 West 35th St.
New York, NY 10001

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
31st day of January, 1984.

David Parchuck

William A. Chalmer
Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

State of New York }
County of Albany } ss.:

Donald B. Yellin
265 Great Neck Rd.
Great Neck, NY 11021

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

David Parcluck

Carrie Rodriguez
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chelsea 19th Street Associates : AFFIDAVIT OF MAILING
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Article 11 of the Tax Law for the Mortgage :
Recorded on 9/7/82.

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of January, 1984, he served the within notice of Decision by certified mail upon Arnold Fox, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arnold Fox
Office of Corporation Counsel
City of New York
100 Church St.
New York, NY 10007

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
31st day of January, 1984.

David Parchuck

Quinn A. Hagelbeck
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chelsea 19th Street Associates : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Mortgage Tax under :
Article 11 of the Tax Law for the Mortgage :
Recorded on 9/7/82.

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of January, 1984, he served the within notice of Decision by certified mail upon George Faeth, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

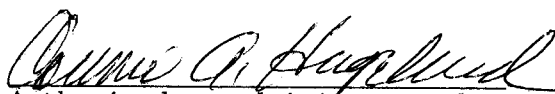
George Faeth-Commissioner
City Register-New York County
31 Chambers St.
New York, NY 10007

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
31st day of January, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chelsea 19th Street Associates : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Mortgage Tax under :
Article 11 of the Tax Law for the Mortgage :
Recorded on 9/7/82.

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of January, 1984, he served the within notice of Decision by certified mail upon Arthur Maxwell, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

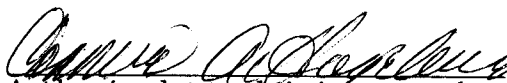
Arthur Maxwell
Mortgage & Real Estate Transfer
Tax Unit
Room 403, Bldg. #9
Albany, NY

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
31st day of January, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 31, 1984

Chelsea 19th Street Associates
c/o Kaye-Marin Associates, Inc.
175 Clearbrook Rd.
Elmsford, NY 10523

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 251 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representatives: (See Attached Listing)

Taxing Bureau's Representative

Petitioner's Representatives:

Robert E. Helpern
Newman, Tannenbaum, Helpern & Hirschtritt
310 Madison Avenue
New York, NY 10017

AND

Gemrose Realty, Inc.
c/o Jerome Gold
11 Park Place
New York, NY 10007

AND

Martin Hollander
c/o Kaye-Marin Assoc., Inc.
212 West 35th Street
New York, NY 10001

AND

Donald B. Yellin
265 Great Neck Rd.
Great Neck, NY 11021

AND

Arnold Fox
Office of Corporation Counsel
City of New York
100 Church St.
New York, NY 10007

AND

George Faeth-Commissioner
City Register-New York County
31 Chambers Street
New York, NY 10007

AND

Arthur Maxwell
Mortgage & Real Est.
Transfer Tax Unit
Room 403, Bldg. #9
State Campus
Albany, NY

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CHELSEA-19TH STREET ASSOCIATES	:	DECISION
	:	
for Redetermination of Mortgage Recording Tax	:	
under Article 11 of the Tax Law with Reference	:	
to Three Mortgages Recorded on September 7,	:	
1982.	:	

Petitioner, Chelsea-19th Street Associates, c/o Kaye Marin Assoc., Inc., 175 Clearbrook Road, Elmsford, New York 10523, filed a petition for redetermination of mortgage recording tax under Article 11 of the Tax Law with reference to three mortgages recorded on September 7, 1982 (File No. 40828).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 24, 1983 at 9:00 A.M., with all briefs to be submitted by August 30, 1983. Petitioner appeared by Newman, Tannenbaum, Helporn & Hirschtritt (Vincent Syracuse, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Anna Colello, Esq., of counsel). The City of New York appeared by Frederick A. O. Schwarz, Esq. (Arnold Fox, Esq., of counsel).

ISSUE

Whether three mortgages executed by the same mortgagor to three separate mortgagees on the same parcels of real property may be aggregated for purposes of the Mortgage Recording Tax thus subjecting said mortgages to a higher tax rate.

FINDINGS OF FACT

1. Pursuant to a contract of sale between KMSP Realty Corp. ("KMSP") and Gemrose Realty Corp. ("Gemrose") dated May 21, 1982, Gemrose contracted to convey the premises known as 259 through 265 West 19th Street and 178 through 186 Eighth Avenue, New York, New York, to KMSP for a purchase price of \$1,000,000.00. The purchaser was to take title subject to a \$350,000.00 wraparound mortgage and make a cash payment of \$215,000.00. Additionally, the purchaser agreed to execute and deliver a purchase money mortgage of \$435,000.00 to Gemrose.

2. By an "exchange agreement" dated August 25, 1982, KMSP assigned all of its interest in the May 21, 1982 contract with Gemrose to petitioner, Chelsea-19th Street Associates. In consideration of the assignment, petitioner agreed to execute and deliver to LRBK Associates ("LRBK"), Martin Hollander and Bruce Kaye a note and mortgage on the property in issue in the amount of \$100,000.00. Hollander, Kaye and LRBK are also the general partners of petitioner. LRBK is a partnership whose general partners are Robert Korval, Sy Bressler, George Liebner and Martin Roth. Hollander, Kaye and the general partners of LRBK are also the officers of KMSP. None of the principals of petitioner, LRBK and KMSP are related in any way to Gemrose or any of the principals of Gemrose, and none of them had ever had any dealings with Gemrose prior to the sale of the properties in issue.

3. An additional requirement of the sale was that petitioner obtain the consent of prior mortgagees to the sale. Under the terms of a wraparound mortgage previously held on the properties by Donald B. Yellin, Armand Knopf and Jesse Gottlieb, the three mortgagees had the right to approve or disapprove any further mortgages on the properties. In order to obtain such consent, petitioner agreed to pay a fee of \$144,000.00 to the prior mortgagees. Petitioner

paid \$108,000.00 of the fee by execution and delivery of a note and mortgage in said amount to Yellin, Knopf and Gottlieb. Neither Yellin, Knopf nor Gottlieb had any affiliation with petitioner, KMSP, LRBK or Gemrose other than the transactions involving the properties in issue.

4. All three mortgages were executed on August 25, 1982 and all three mortgages were recorded on September 7, 1982 in New York County. The recording officer required that the principal amounts of the three mortgages be aggregated. The total principal sum was \$643,000.00. The recording officer then imposed a Mortgage Recording Tax of \$14,467.50 computed at the rate of $2\frac{1}{4}$ percent of the aggregate principal amount since it exceeded \$500,000.00 in total. Had the tax been assessed separately on each mortgage at the rate of $1\frac{1}{2}$ percent, since each mortgage had a principal amount less than \$500,000.00, the tax would have been \$6,525.00 for the Gemrose mortgage, \$1,500.00 for the KMSP mortgage and \$1,620.00 for the Yellin mortgage for a total of \$9,645.00. Petitioner paid at the higher rate and requested a refund of \$4,822.50, the difference between the two rates.

5. Petitioner maintains that the principal amounts of the three mortgages should not have been aggregated since each was a separate mortgage, to separate unrelated mortgagees, for separate purposes, albeit for the same properties. The Department of Taxation and Finance agrees with petitioner that, under the facts of this case, the mortgages should not have been aggregated. The City of New York, on the other hand, argues that since the three mortgages were essential parts of the same transaction, executed at the same time by the same obligor, recorded at the same time, and covered the same property, they were properly aggregated and taxed at the higher rate applicable to mortgages securing obligations of more than \$500,000.00. The City bases its argument on the

supposition that, if petitioner had been unable to obtain individual mortgages from the seller, assignors, and prior mortgagees, it would have had to borrow the same total amount from a single lender and thus there would have been one mortgage at the higher rate.

CONCLUSIONS OF LAW

A. That section 253.1 of the Tax Law provides, in part, that:

"[a] tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of the execution thereof or at any time thereafter by a mortgage on real property situated within the state recorded on or after the first day of July, nineteen hundred and six, is hereby imposed on each such mortgage..." (emphasis added).

Subdivisions 1-a(a) and 2(a) of section 253 impose additional taxes of twenty-five cents each on each \$100.00 of principal indebtedness, with certain exceptions not applicable herein.

B. That section 253-a of the Tax Law authorizes any city in New York having a population of one million or more to adopt local laws imposing, "with respect to real property securing a principal debt or obligation of less than five hundred thousand dollars, a tax of fifty cents, with respect to one, two or three-family houses, individual cooperative apartments and individual residential condominium units securing a principal debt or obligation of five hundred thousand dollars or more, a tax of sixty-two and one-half cents, and with respect to all other real property a tax of one dollar and twenty-five cents, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on such real property...". Title W, section W46-1.0 of the Administrative

Code of the City of New York adopts the language of section 253 and imposes the tax authorized by section 253-a.


C. That the language of the aforesaid statutes, both State and City, expressly states that the tax is imposed on "each such mortgage". Section 253-a refers to "a mortgage" securing "a principal debt". There is no provision for aggregating mortgages merely because they apply to the same property. In the instant case, the three mortgages were held by three completely separate and unrelated mortgagees. Moreover, each mortgage was executed for a different purpose; only one was executed in order to obtain financing to pay for the property. One was a purchase money mortgage, one was made to pay for a contract assignment, and one was made to pay for a consent by prior mortgagees. There were three separate "principal debts", each to a different creditor. There was no basis for the recording officer to aggregate the three mortgages and assess the higher tax rate. While it might be true that, if petitioner had been unable to make the mortgage arrangements it did, it might have had to obtain a single loan from one lender secured by one mortgage in an amount higher than \$500,000.00. However, this is mere speculation. "The parties chose a method which...was open to them under the statute and, by using it, they succeeded in keeping down their mortgage tax liability...". "This they had the right to do." (Fifth Avenue & 46th Street Corp. v. Bragalini, 4 A.D.2d 387). The tax should have been imposed on each mortgage at the rate for mortgages of less than \$500,000.00.


D. That the petition of Chelsea-19th Street Associates is granted and the Audit Division is directed to refund the sum of \$4,822.50, together with such interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 2/7/84
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition A - Dec - 1/31/84
Name Chelsea 19 th Street Associates	
Address c/o Kays-Marine Associates, Inc. 175 Charbrook Rd. Chesford, N.Y. 10523	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

ed

CLAIM CHECK
NO.

☐ HOLD

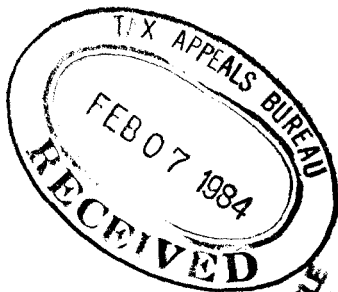
DATE

1ST NOTICE

2ND NOTICE

RETURN

Revised from
Form 3548-A
May 1979



Chelsea 19th Street Associates
c/o Kaye-Marin Associates, Inc.
175 Clearbrook Rd.
Elmsford, NY 10523

UNRECORDED
27 9090

CERTIFIED

P-230 844 498

MAIL

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 31, 1984

Chelsea 19th Street Associates
c/o Kaye-Marin Associates, Inc.
175 Clearbrook Rd.
Elmsford, NY 10523

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 251 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representatives: (See Attached Listing)

Taxing Bureau's Representative

Petitioner's Representatives:

Robert E. Helpern
Newman, Tannenbaum, Helpern & Hirschtritt
310 Madison Avenue
New York, NY 10017

AND

Gemrose Realty, Inc.
c/o Jerome Gold
11 Park Place
New York, NY 10007

AND

Martin Hollander
c/o Kaye-Marin Assoc., Inc.
212 West 35th Street
New York, NY 10001

AND

Donald B. Yellin
265 Great Neck Rd.
Great Neck, NY 11021

AND

Arnold Fox
Office of Corporation Counsel
City of New York
100 Church St.
New York, NY 10007

AND

George Faeth-Commissioner
City Register-New York County
31 Chambers Street
New York, NY 10007

AND

Arthur Maxwell
Mortgage & Real Est.
Transfer Tax Unit
Room 403, Bldg. #9
State Campus
Albany, NY

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
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of	:	
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CHELSEA-19TH STREET ASSOCIATES	:	DECISION
	:	
for Redetermination of Mortgage Recording Tax	:	
under Article 11 of the Tax Law with Reference	:	
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1982.	:	

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1. Pursuant to a contract of sale between KMSP Realty Corp. ("KMSP") and Gemrose Realty Corp. ("Gemrose") dated May 21, 1982, Gemrose contracted to convey the premises known as 259 through 265 West 19th Street and 178 through 186 Eighth Avenue, New York, New York, to KMSP for a purchase price of \$1,000,000.00. The purchaser was to take title subject to a \$350,000.00 wraparound mortgage and make a cash payment of \$215,000.00. Additionally, the purchaser agreed to execute and deliver a purchase money mortgage of \$435,000.00 to Gemrose.

2. By an "exchange agreement" dated August 25, 1982, KMSP assigned all of its interest in the May 21, 1982 contract with Gemrose to petitioner, Chelsea-19th Street Associates. In consideration of the assignment, petitioner agreed to execute and deliver to LRBK Associates ("LRBK"), Martin Hollander and Bruce Kaye a note and mortgage on the property in issue in the amount of \$100,000.00. Hollander, Kaye and LRBK are also the general partners of petitioner. LRBK is a partnership whose general partners are Robert Korval, Sy Bressler, George Liebner and Martin Roth. Hollander, Kaye and the general partners of LRBK are also the officers of KMSP. None of the principals of petitioner, LRBK and KMSP are related in any way to Gemrose or any of the principals of Gemrose, and none of them had ever had any dealings with Gemrose prior to the sale of the properties in issue.

3. An additional requirement of the sale was that petitioner obtain the consent of prior mortgagees to the sale. Under the terms of a wraparound mortgage previously held on the properties by Donald B. Yellin, Armand Knopf and Jesse Gottlieb, the three mortgagees had the right to approve or disapprove any further mortgages on the properties. In order to obtain such consent, petitioner agreed to pay a fee of \$144,000.00 to the prior mortgagees. Petitioner

paid \$108,000.00 of the fee by execution and delivery of a note and mortgage in said amount to Yellin, Knopf and Gottlieb. Neither Yellin, Knopf nor Gottlieb had any affiliation with petitioner, KMSP, LRBK or Gemrose other than the transactions involving the properties in issue.

4. All three mortgages were executed on August 25, 1982 and all three mortgages were recorded on September 7, 1982 in New York County. The recording officer required that the principal amounts of the three mortgages be aggregated. The total principal sum was \$643,000.00. The recording officer then imposed a Mortgage Recording Tax of \$14,467.50 computed at the rate of $2\frac{1}{4}$ percent of the aggregate principal amount since it exceeded \$500,000.00 in total. Had the tax been assessed separately on each mortgage at the rate of $1\frac{1}{2}$ percent, since each mortgage had a principal amount less than \$500,000.00, the tax would have been \$6,525.00 for the Gemrose mortgage, \$1,500.00 for the KMSP mortgage and \$1,620.00 for the Yellin mortgage for a total of \$9,645.00. Petitioner paid at the higher rate and requested a refund of \$4,822.50, the difference between the two rates.

5. Petitioner maintains that the principal amounts of the three mortgages should not have been aggregated since each was a separate mortgage, to separate unrelated mortgagees, for separate purposes, albeit for the same properties. The Department of Taxation and Finance agrees with petitioner that, under the facts of this case, the mortgages should not have been aggregated. The City of New York, on the other hand, argues that since the three mortgages were essential parts of the same transaction, executed at the same time by the same obligor, recorded at the same time, and covered the same property, they were properly aggregated and taxed at the higher rate applicable to mortgages securing obligations of more than \$500,000.00. The City bases its argument on the

supposition that, if petitioner had been unable to obtain individual mortgages from the seller, assignors, and prior mortgagees, it would have had to borrow the same total amount from a single lender and thus there would have been one mortgage at the higher rate.

CONCLUSIONS OF LAW

A. That section 253.1 of the Tax Law provides, in part, that:

"[a] tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of the execution thereof or at any time thereafter by a mortgage on real property situated within the state recorded on or after the first day of July, nineteen hundred and six, is hereby imposed on each such mortgage..." (emphasis added).

Subdivisions 1-a(a) and 2(a) of section 253 impose additional taxes of twenty-five cents each on each \$100.00 of principal indebtedness, with certain exceptions not applicable herein.

B. That section 253-a of the Tax Law authorizes any city in New York having a population of one million or more to adopt local laws imposing, "with respect to real property securing a principal debt or obligation of less than five hundred thousand dollars, a tax of fifty cents, with respect to one, two or three-family houses, individual cooperative apartments and individual residential condominium units securing a principal debt or obligation of five hundred thousand dollars or more, a tax of sixty-two and one-half cents, and with respect to all other real property a tax of one dollar and twenty-five cents, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on such real property...". Title W, section W46-1.0 of the Administrative

Code of the City of New York adopts the language of section 253 and imposes the tax authorized by section 253-a.

C. That the language of the aforesaid statutes, both State and City, expressly states that the tax is imposed on "each such mortgage". Section 253-a refers to "a mortgage" securing "a principal debt". There is no provision for aggregating mortgages merely because they apply to the same property. In the instant case, the three mortgages were held by three completely separate and unrelated mortgagees. Moreover, each mortgage was executed for a different purpose; only one was executed in order to obtain financing to pay for the property. One was a purchase money mortgage, one was made to pay for a contract assignment, and one was made to pay for a consent by prior mortgagees. There were three separate "principal debts", each to a different creditor. There was no basis for the recording officer to aggregate the three mortgages and assess the higher tax rate. While it might be true that, if petitioner had been unable to make the mortgage arrangements it did, it might have had to obtain a single loan from one lender secured by one mortgage in an amount higher than \$500,000.00. However, this is mere speculation. "The parties chose a method which...was open to them under the statute and, by using it, they succeeded in keeping down their mortgage tax liability...". "This they had the right to do." (Fifth Avenue & 46th Street Corp. v. Bragalini, 4 A.D.2d 387). The tax should have been imposed on each mortgage at the rate for mortgages of less than \$500,000.00.

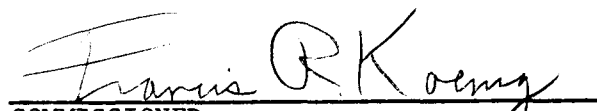
D. That the petition of Chelsea-19th Street Associates is granted and the Audit Division is directed to refund the sum of \$4,822.50, together with such interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER